

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Trent Jarvis Brooks,

Plaintiff,

v.

Case No. 09-11787

Transcontinental System, Inc.,

Honorable Sean. F. Cox

Defendant.

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**ORDER ACCEPTING, IN PART,
NOVEMBER 15, 2010 REPORT & RECOMMENDATION**

Through his attorney, George C. Cushingberry, Jr., Plaintiff filed this action in state court on or about February 9, 2009. Defendant removed the action to this Court.

Due to Mr. Cushingberry's repeated failure to cooperate in discovery, on April 9, 2010, Magistrate Judge Virginia Morgan ordered Mr. Cushingberry to pay sanctions in the amount of \$5,000.00, payable to Defense Counsel and Defendant. (*See* Docket Entry No. 32). Magistrate Judge Morgan ordered that \$1,500.00 be made payable immediately and stated that she would consider a reduction in the balance depending on the future conduct of plaintiff's counsel. (*Id.*).

Nevertheless, Mr. Cushingberry continued to refuse to cooperate in discovery and did not pay any portion of the sanctions ordered by Magistrate Judge Morgan.

On April 14, 2010, Defendant Transcontinental filed a motion to dismiss for failure to comply with court's order for discovery and sanctions (Docket Entry No. 34), which this Court referred to Magistrate Judge Virginia Moran for issuance of a report and recommendation ("R&R").

On June 18, 2010, Magistrate Judge Morgan issued an R&R recommending that

Defendant's motion be granted and that Plaintiff's complaint be dismissed with prejudice for failure to comply with the Court's order for discovery and sanctions. (Docket Entry No. 41). Plaintiff filed no objections to that R&R, which this Court then adopted in an Order entered on July 6, 2010. (Docket Entry No. 43).

On August 27, 2010, Defendant filed a motion requesting that the Court issue an order to show cause to Mr. Cushingberry, ordering Mr. Cushingberry to show cause why he should not be held in contempt for failure to comply with the Court's order imposing sanctions. (Docket Entry No. 45). This Court referred the motion to Magistrate Judge Morgan, pursuant to 28 U.S.C. § 636(b)(1)(B). (Docket Entry No. 46).

Magistrate Judge Morgan ordered Mr. Cushingberry to show cause, no later than October 13, 2010, why he should not be held in contempt. (Docket Entry No. 47). Mr. Cushingberry did not respond to the show cause order.

On November 15, 2010, Magistrate Judge Morgan issued a "Report and Recommendation that Attorney George C. Cushingberry, Jr. Be Held in Civil Contempt of Court." (Docket Entry No. 48). In that R&R, Magistrate Judge Morgan recommends that the Court Order:

- 1) Mr. Cushingberry to pay \$5,000.00 to Defendant's Counsel no later than December 15, 2010;
- 2) That if the amount is not paid as ordered, Judgment be entered against Mr. Cushingberry for \$5,000.00, plus statutory interest from September 29, 2010;
- 3) Mr. Cushingberry suspended from the practice of law in the Eastern District of Michigan until the \$5,000.00 is paid; and
- 4) That a copy of the Judgment and Mr. Cushingberry's suspension be forwarded to the State Bar of Michigan.

(*Id.* at 3).

Pursuant to 28 U.S.C. § 636(b)(1), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R. “The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection has been made.” *Id.*

The time for filing objections to the November 15, 2010 R&R has expired and the docket reflects that Mr. Cushingberry has filed no objections to the R&R.

The Court hereby ADOPTS the November 15, 2010 R&R, in part, and ORDERS that Mr. Cushingberry shall pay \$5,000.00 to Defendant’s Counsel no later than **December 15, 2010**.

IT IS FURTHER ORDERED that if Mr. Cushingberry fails to pay that amount by December 15, 2010, this Court shall enter a Judgment against Mr. Cushingberry for \$5,000.00, plus statutory interest from September 29, 2010.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: December 7, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on December 7, 2010, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager